(1)

SUPREME COURT U.S.

001071 SEP 18 2000

No. _____

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

PETITIONERS

LUIS CARRERAS-ROSA
FRANCISCO SOLER-ROSA

v.

MELVIN ALVES-CRUZ, et al.,

RESPONDENTS

On Petition For Writ Of Certiorari
To The US Court Of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioners

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73pp

QUESTIONS PRESENTED

1. Whether the Order entered on docket on March 4, 1999, by Honorable Juan M. Pérez-Gimenez dismissing plaintiffs-appellants section 1983 action based on an alleged claim for failing to serve summons and complaint within the Fed.R.Civ.P. 4(m) 120 days limitation period, and the concurring judgement of the Court of Appeals for the First Circuit, violates the extension of the 120 days period previously granted by Honorable Juan M. Pérez-Gimenez under Fed.R.Civ.P. 6(b) on October 17, 1995, and U.S. Const. Amend. V, and XIV?

2. Whether the Order entered on docket on March 4, 1999, by Honorable Juan M. Pérez-Gimenez dismissing plaintiffs-appellants section 1983 action based on an alleged claim for failing to comply with a Court Order to provide in 15 days by means of an amended complaint in which capacity defendant Alves-Cruz was being sued, and the concurring judgement of the Court of Appeals for the First Circuit, violates the January 14, 1999 Court Order previously issued by Honorable Juan M. Pérez-Gimenez denying the motion by Alves-Cruz to Dismiss for non-compliance with the above referred Court Order to provide in 15 days by means of an amended complaint, and U.S. Const. Amend. V, and XIV?

3. Whether the Order entered on docket on March 4, 1999, by Honorable Juan M. Pérez-Gimenez dismissing plaintiffs-appellants section 1983 action based on an alleged claim of lack of prosecution that stuck this case for more than three years in the District Court docket, and the concurring judgement of the Court of Appeals for the First Circuit:

a. constitute an abuse of discretion that relies on an improper application of law by Honorable Juan M. Pérez-Gimenez that stuck this case for a year and 2 months before the Court of Appeals for the First Circuit, Carreras v Alves-Cruz,USCA 96-2370..... which arises from defendants-appellees Melvin Alves-Cruz et als, deliberate and misleading concealment before the District Court and the Court of Appeals for the First Circuit of the existence of state adverse and pertinent legal authorities?

b. constitute an abuse of discretion by Honorable Juan M. Pérez-Gimenez that relies on an improper application of facts that arise from the records of the court which state that defendants-appellees

Melvin Alves-Cruz et als, haven't complied with discovery served according to the time table set by Honorable Juan M. Pérez-Gimenez, and pursuant to Honorable Juan M. Pérez-Gimenez December 14, 1995 Endorsed Order, are 3 years and 2 months in default in responding to the summons and complaint?

4.Whether the above referred Order, must be vacated for the clear inconsistencies and errors of judgement of the District Court and the concurring judgement of the Court of Appeals for the First Circuit, by virtue of the aforementioned abuse of discretion, Stough v. Mayville Community School, 138 F.3d 612, (6th Cir. 1998) and violation of the and U.S. Const. Amend. V, and XIV?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is subject of this petition is as follows:

Petitioners

1. Luis Carreras-Rosa
2. Francisco Soler-Rosa

Respondents

1. Melvin Alves-Cruz
2. Samuel Soe, Thomas Toe, and Victor Voe, all fictitious names representing officials of the Puerto Rico Police Department.

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In

Supreme Court of the United States

PETITION FOR CERTIORARI

Petitioners respectfully prays that a writ of certiorari be issued to review the judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion and judgement of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

On April 20, 2000, the United States Court of Appeals for the First Circuit entered the judgement appealed from the United States District Court for the District of Puerto Rico. The First Circuit court's accompanying opinion (USCA No.99-1546) [App. A], upheld the Opinion and Order issued by the District Court for the District of Puerto Rico (USDC

No.1640{PG}), dismissing a wrongful death civil rights action of plaintiffs-petitioners Luis Carreras-Rosa and Francisco Soler-Rosa (decedent's successors herein), before the Honorable Juan M. Pérez-Gimenez,.

On July 19, 2000, petitioners filed a timely motion pursuant to the Rules of the Supreme Court of the United States, for an extension of time to file their brief as required by Rule 13 of said rules.

The petition was granted by Justice Souter, who on July 27, 2000, extended the time to and including September 17, 2000, which fell on Sunday. Pursuant Sup. Ct. R. 30, the period is extended to Monday, September 18, 2000.

This court has jurisdiction over review by writ of certiorari from final judgement of the courts of appeals under 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rules 4(m), 6(a), 6(b), 6(e) of the Fed. Rules of Civil Procedure; 28 USC sec. 1291, 1331, 1343, 1367 and 42 USC sec. 1983, 1986 and 1988, Fifth (V) and Fourteenth (XIV) amendments of the Constitution of the United States.

STATEMENT OF THE CASE

The basis of for federal jurisdiction in the court of first instance is 42 USC sections 1983, 1986, 1988 and 28 USC sections 1331, 1343, 1367.

This appeal is from the dismissal of a wrongful death civil rights action of plaintiffs-petitioners Luis Carreras-Rosa and Francisco Soler-Rosa (decedent's successors herein), in the United States District Court for the District of Puerto Rico, before the Honorable Juan M. Pérez-Gimenez, and the concurring judgement of the Court of Appeals for the First Circuit.

On March 4, 1999, the District Court entered on docket an Opinion and Order wherein it dismissed the civil rights action of plaintiffs-petitioners Luis Carreras-Rosa and Francisco Soler-Rosa (decedent's successors herein), against defendants-respondents Melvin Alves-Cruz et al. by which the Motion to Dismiss filed by said defendants-respondents was granted [App. B].

THE DISTRICT COURT, GRANTED THE ABOVE REFERRED MOTION TO DISMISS, BASED ON:

a. an alleged claim for failing to serve summons and complaint within the Fed. R. Civ. P. 4(m) 120 days limitation period [App. B].

b. an alleged claim for failing to comply with a Court Order to provide in 15 days by means of an amended complaint in which capacity defendant Alves-Cruz was being sued [App. B].

c. an alleged claim of lack of prosecution that stuck this case for more than three years in the District Court docket [App. B].

1. On October 12, 1995, plaintiffs-petitioners filed a motion to extend time until November 10, 1995, in order to adequately serve defendant-respondent Alves-Cruz with the summons and complaint, [docket-2] [App. E].

a. In support of their petition, plaintiffs-petitioners stated that at the moment of the filing of the above captioned complaint, defendant-respondent Melvin Alves-Cruz known address was Monte Hatillo, State Police Station, located at the north side of the island of Puerto Rico, were subsequently plaintiffs-petitioners were informed that the referred defendant-respondent was transferred to Mayaguez City, State Police Station, located at the west side of the island.

b. This information was confirmed by Lt.José Luis Rios (6-2407) of "Cuartel de Mayaguez" who stated that from the first day that defendant-respondent was transferred to Mayaguez (June 20, 1995), he was placed and still continued off duty, in virtue of a

medical order issued by "El Fondo del Seguro del Estado" (Workers Disability State Agency).

c. Subsequently, Lt.José Luis Rios (6-2407) stated to the undersigned attorney Law Clerk Mr.Francisco Díaz Jr. (ABA Student no. 62405077), that in virtue of orders issued by his superiors commanding him to protect the security of Police Officers, he was unable to produce the address of the referred defendant-respondent, notwithstanding he was willing to order defendant-respondent Alves-Cruz to assist to his office to be adequately served with the summons and complaint of the above captioned case, if it was ordered by the District Court.

d. Notwithstanding, the multiple efforts made by private investigator Hiram Meléndez (hired by plaintiffs-petitioners in virtue of), plaintiffs-petitioners were unable to serve defendant Melvin Alves-Cruz with the summons and complaint of the above captioned case, based on the fact that defendants-respondents´s address was been concealed and protected by the Puerto Rico State Police, [docket-2] [App.E].

e. On October 17, 1995, Honorable Juan M. Pérez-Gimenez granted plaintiffs-petitioners motion to extend time until November 10, 1995, to serve summons and complaint to defendant-respondent Alves-Cruz [App. E, F].

f. On November 8, 1995, the State Marshal Renaldo Vélez (Mayaguez Court House), served

personally the summons and complaint to defendant-respondent Alves-Cruz, [docket-3] [App. E, G].

Consequently, the summons and complaint to defendant-respondent Alves-Cruz were served within the applicable statutory period on November 8, 1995, [docket-3] [App. E, G].

When service has been accomplished within 120 days or any extension granted by the District Court, the plaintiff is considered to have been diligent and no dismissal for lack of prosecution can be based on any alleged delay in making service, Hernández v City of El Monte, 138 F 3d 393, 400-1 (9th Cir.1998); McGuire v. Turnbo, 137 F 3d 321, 324 (5th Cir. 1998).

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2. On July 15, 1996, Honorable Juan M. Pérez-Gimenez, by virtue of an incorrect and misleading allegation by defendant-respondent attorneys, issued an Order and Judgement dismissing the civil rights action of plaintiffs-petitioners on the basis of a time barred allegation in virtue of the one year statute of limitation, (Honorable Juan M. Pérez-Gimenez is an attorney admitted to the bar of the Commonwealth of Puerto Rico) [App. B, C].

The referred Order arose from defendants-respondents Melvin Alves-Cruz et al. illegal, deliberate and misleading concealment before the District Court (and subsequently before the Court of Appeals for the

First Circuit) of the existence of state (Commonwealth of Puerto Rico) adverse and pertinent legal authorities.

On July 13 1997, defendant Alves-Cruz filed a Supplemental Brief before this Court of Appeals for the First Circuit, defendants-respondents held that "plaintiff may be correct when they state that complaint filed on Monday, May 22, 1995 is not time-barred".

On October 9, 1997, the USCA vacated the Honorable Juan M. Pérez-Gimenez judgement and remanded for further proceedings 127 F.3d 172 (1st Cir. 1997) [App. D, E] [docket-16-17].

This illegal, deliberate and misleading concealment performed by the Commonwealth of Puerto Rico Department of Justice Solicitor General Office, and their Federal Litigation Offices (defendants legal representation), before the District Court and subsequently before the Court of Appeals for the First Circuit, and the clearly inconsistencies, erroneous finding of facts and an improper application of law by Honorable Juan M. Pérez-Gimenez who's an attorney admitted to the bar of the Commonwealth of Puerto Rico, stuck this case for a year and two (2) months before this Honorable Court of Appeals Carreras v. Alves-Cruz, 127 F.3d 172 (1st Cir. 1997) [App. D].

3. DISTRICT COURT AMENDED STANDING ORDER NO. (98-34)

On September 1, 1998, Honorable Juan M. Pérez-Gimenez, issued an Opinion and Order granting plaintiffs 15 days by means of an amended complaint in which capacity defendant-respondent Alves-Cruz was being sued, which was entered on docket on September 2, 1998. The District Court Clerk's Offices, notified the referred Order to plaintiffs by regular mail.[docket-30] [App. E].

a. Fed. R. Civ. P. 6(e), allows 3 more days when service is accomplished by mail. Thus the term to comply with the Court's orders was extended to 18 days.

b. Pursuant to Fed. R. Civ. P. 6(a), September 2, 1998, is excluded from the computation.

c. Plaintiffs had until Sunday, September 20, 1998, to comply with the above referred court's order.

d. Fed. R. Civ. P. 6(a), provides that weekends are excluded from the computation of time, therefore the term to file the amended complaint extended to Monday September 21, 1998.

e. On account of the passage of the Hurricane Georges through Puerto Rico the District Courts Operations were completely shutdown from Monday September 21, 1998, through Friday September 25, 1998.

f. Pursuant to September 28, 1998 AMENDED ORDER, the District Court took measures on account of the passage of the Hurricane Georges through Puerto Rico, EXTENDING THE TIME TO FILE MOTIONS FROM FRIDAY, SEPTEMBER 18, 1998 TO FRIDAY, OCTOBER 30, 1998, both days inclusive [App.H].

g. From the fact that on September 18, 1998, 2 days remained for the expiration of the limitation period, the term ran to Tuesday, November 3, 1998, date in which the amended complaint was filed. Consequently, the amended complaint at bar was filed within the applicable statutory period on November 3,1998 [App.I].

h. The referred motion was filed through the Clerk's of the court drop box

on November 3, 1998 [App. I], according to the seal stamped by the box mechanism on the right corner of petitioners copy of such document, which was offered as proof marked as (Appendix 9-18) of petitioners brief, case no. 99-1546 (1st Cir.).

By clerical mistake, the date of the filing was entered on the docket November 6th, D.C. of P.R. case no. 95-1640 (PG) docket sheet [docket-31] [App. E].

IMPROPER APPLICATION

a. On May 22, 1995, a civil action (complaint) was filed seeking damages against defendants-respondents Melvin Alves-Cruz et al. for wrongful death, conspiring and committing acts under color of law which illegally deprived plaintiffs-petitioners' decedent Angel Luis Soler-Rosa of rights secured under the fourth, fifth, eight, ninth, and fourteenth amendments of the Constitution of the United States, 42 USC 1983, 1986, 1988, 28 USC 1331, 1343 and 1367.

And (3) years and 2 months later, defendants-respondents continue in default in responding to summons and complaint.

b. According the time table set by Honorable Juan M. Pérez-Gimenez [docket-37] [App. E],

plaintiffs-petitioners failed to comply with the February 26, 1999, discovery dead line. Instead, on January 29, 1999, defendant-respondent Alves-Cruz filed a motion to dismiss and to strike plaintiffs-petitioners' amended complaint, [docket-38] [App. E].

Discovery is the principal fact-gathering method in the formal litigation process, including the identity of unknown or fictitious defendants.

The cumulative effect of these defaults and the aforementioned failure to comply to answer discovery, were so severe as to unable plaintiffs-petitioners to identify defendants Samuel Soe, Thomas Toe, and Victor Voe, fictitious names of employees of the Puerto Rico State Police.

***STILL MORE*, defendants-respondents abused of process by filing five (5) motions to dismiss (dockets-07-10-24-33-38) [App.E] alleging special appearances without submitting to the Court's jurisdiction as far as the January 29, 1999, motion to dismiss granted by Honorable Juan M. Pérez-Gimenez, that relies on a clearly and erroneous finding of facts and an improper application of law, [docket-28] [App. E].**

REASONS FOR GRANTING THE WRIT

THE ORDER AND JUDGMENT ENTERED ON DOCKET MARCH 4, 1999 DISMISSING THE CASE:

a. VIOLATES the October 17, 1995, extension of the 120 days, previously granted by Honorable Juan M. Pérez-Gimenez, pursuant Fed. R. Civ. P. 6(b), McGuire v. Turnbo, 137 F.3d 321 (5th Cir. 1998).

b. VIOLATES the January 14, 1999 Court Order [App.5,10] previously issued by the same Honorable Juan M. Pérez-Gimenez denying the December 7, 1998, motion by Alves-Cruz to Dismiss for non-compliance with the September 1, 1998 [docket 33] [App.E], Court Order to provide in 15 days by means of an amended complaint.

c. Constitute an abuse of discretion, that relies on an improper application of law by Honorable Juan M. Pérez-Gimenez that stuck this case for a year and (2) months before this Honorable Court of Appeals, Carreras v. Alves-Cruz, 127 F. 3d 172 (1st Cir 1997) [App.D], that arises from defendants-respondents Melvin Alves-Cruz et al.; deliberate and misleading concealment before the District Court and the Honorable Court of Appeals of the existence of state adverse and pertinent legal authorities.

d. Constitute an abuse of discretion, by Honorable Juan M. Pérez-Gimenez, that relies on an improper application of facts that arise from the

records of the District Court, that state that defendants-respondents Melvin Alves-Cruz et al. :

(1) Haven't answered the discovery served by plaintiffs-petitioners according the time table set by Honorable Juan M. Pérez-Gimenez, [docket-37] [App. E].

(2) Haven't answered the complaint filed on may 22, 1995, neither the above referred amended complaint filed on November 3, 1998.

e. CONSTITUTE AN ABUSE OF DISCRETION, by Honorable Juan M. Pérez-Gimenez, that relies on an improper application of facts that arise from the records of the District Court that state that pursuant to September 28, 1998, AMENDED ORDER (98-34), the District Court took measures on account of the passage of the Hurricane Georges through Puerto Rico, EXTENDING THE TIME TO FILE MOTIONS FROM SEPTEMBER 18, 1998 TO OCTOBER 30, 1998, both days inclusive, [App. H].

Involuntary dismissal is reviewed under the abuse of discretion standard. Link v. Wabash Railroad Co. 370 US 626, 627 (1962); Velázquez Rivera v. Sea-Land Service, Inc. 920 F2d 1072, 1075 (1st Cir. 1990).

Abuse of discretion exists when the reviewing court is firmly convinced that a mistake has been made; the District Court abuses its discretion when it relies on clearly erroneous findings of fact, when it

improperly applies law, or when it uses an erroneous legal standard, Stough v. Mayville Community Schools, 138 F3d 612 (6th Cir. 1998).

CONCLUSION

The only conclusion that can be arrived at in light of the foregoing, is that:

1. On July 15, 1996, Honorable Juan M. Pérez-Gimenez, issued an Order and Judgement dismissing the civil rights action of plaintiffs on the basis of a time barred allegation in virtue of the one year statute of limitation, (Honorable Juan M. Pérez-Gimenez is an attorney admitted to the bar of the Commonwealth of Puerto Rico).

The referred Order arose from defendants-respondents Melvin Alves-Cruz et al, illegal, deliberate and misleading concealment before the District Court (and subsequently before Court of Appeals for the First Circuit) of the existence of state adverse and pertinent legal authorities, [docket-11], [App. E].

On July 13 1997, defendant Alves-Cruz filed a Supplemental Brief before this Honorable Court of Appeals for the First Circuit, defendant held that "plaintiff may be correct when they state that complaint, filed on Monday, May 22, 1995 is not time-barred".

On October 9, 1997, the USCA vacated the Honorable Juan M. Pérez-Gimenez judgement and

remanded for further proceedings 127 F 3d 172 (1st Cir. 1997) [App. D].

This illegal, deliberate and misleading concealment performed by the Commonwealth of Puerto Rico Department of Justice Solicitor General Office, and their Federal Litigation Offices (defendants legal representation), before the District Court and subsequently before this Honorable Court of Appeals, and the clearly inconsistencies, erroneous finding of facts and an improper application of law by Honorable Juan M. Pérez-Gimenez who's an attorney admitted to the bar of the Commonwealth of Puerto Rico, stuck this case for a year and 2 months before the Court of Appeals for the First Circuit Carreras v. Alves-Cruz, 127 F 3d 172 (1st Cir. 1997) [App. D].

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2. The cumulative effect of the abuse of discretion and the improper application of law that relies on an improper application of facts that arise from the records of the District Court, stated that Honorable Juan M. Pérez-Gimenez from July 15, 1996, has been improperly applying law, and erroneous legal standard.

3. The above captioned plaintiffs have established that the evidence attached herewith and discussed herein, in addition to the evidence previously

submitted by them, proves that from July, 1996, **the Commonwealth of Puerto Rico Department of Justice Solicitor General Office, and their Federal Litigation Offices (defendants legal representation),** by virtue of their knowingly false statements of materials facts and law to the District Court and subsequently the Court of Appeals for the First Circuit, have been concealing evidence that under the clause of *DUE PROCESS OF LAW* plaintiffs are entitled to, in order to prove their case.

STILL MORE, defendants abused of process by filing five (5) motions to dismiss (dockets-07-10-24-33-38) [App.E] alleging special appearances without submitting to the Court's jurisdiction as far as the January 29, 1999, motion to dismiss granted by Honorable Juan M. Pérez-Gimenez, that relies on clearly erroneous finding of facts and an improper application of law, [docket-38] [App. E].

THEREFORE, the District Court's Opinion and Order dated March 2, 1999 (entered on docket March 4, 1999),and the concurring judgement of the Court of Appeals for the First Circuit, SHOULD BE REVERSED, AND THE DISTRICT COURT BE ORDERED TO REINSTATE their cause of action against defendants-respondents Melvin Alves-Cruz and Samuel Soe, Thomas Toe, and Victor Voe, fictitious names of employees of the Puerto Rico State Police.

RESPECTFULLY SUBMITTED this day 14 of December, 2000.

CERTIFICATE OF SERVICE

I, Antonio Bauza-Torres, state that on this day I served the above by mailing 3 copies of the corrected Petition for Write of Certiorari to the attorney for the above captioned respondents attorney Gustavo Gelpi, by certified mail at the P.R. Department of Justice, P.O. Box 902192 San Juan P.R. 00902-0192.

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Law Clerk
ABA Student. No. 62405077

[NOT FOR PUBLICATION-NOT TO BE CITED AS PRECENDENT]

UNITED STATES COURT OF APPEALS

For the First Circuit

No. 99-1546

LUIS CARRERAS-ROSA, FRANCISCO SOLER-ROSA

Plaintiffs, Appellants,

v.

MELVIN ALVES-CRUZ, ET AL.

Defendants, Apellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Juan M. Perez-Jimenez,
U.S. District Judge]

Before

Boudin, Circuit Judge,

Bownes, Senior Circuit Judge,

and Lynch, Circuit Judge.

Antonio Bauza Torres for appellants.

Gustavo A. Gelpi, Solicitor General, Commonwealth of Puerto Rico, Rosa N. Russe-Garcia, Deputy Solicitor General, and Roxanna Badillo-Rodriguez, Assistant Solicitor General, for appellees.

Appendix A

BEST AVAILABLE COPY

April 20,2000

LYNCH, Circuit Judge. This in an appeal from the dismissal of a wrongful death civil rights action. Because the dismissal was based on the plaintiffs' failure to comply with certain orders and prosecute the action diligently, review is for abuse of discretion. See Velazquez-Rivera v. Sea-Land Serv., Inc., 920 F2d 1072, 1075 (1st Cir. 1990).

The underlying action arose out of the death of Angel Luis Soler-Rosa who, to paraphrase the complaint, was shot to death by Police Officer Alves-Cruz, after Soler-Rosa, with a toy gun in hand, demanded money from the cashier at a Kentucky Fried Chicken.

On March 4, 1999, the court dismissed this § 1983 action against defendant Alves-Cruz because of the plaintiffs' failure to serve the complaint and summons on Alves-Cruz in his individual capacity within the 120-day limit and because of the plaintiffs' failure to comply with the time limits in a court order that required them to submit an amended complaint that specified in which capacity Alves-Cruz was sued. At the same time, the court also dismissed the action against the pseudonymous defendants for lack of prosecution.

There is a great deal of procedural history not relevant to the decision of this appeal. We turn to the

issue of whether the district court abused its discretion in dismissing the complaint against Alves-Cruz for failure to comply in a timely fashion with its order as to the filing of an amended complaint. On August 31, 1998, the court ordered the plaintiffs to file the amended complaint within fifteen days. The complaint was filed on November 6, 1998. It was not, however, given to the defendants until January 29, 1999.

Plaintiffs say that the filing of the amended complaint was timely. As to the fifteen-day limit, they say that the response was due September 21, 1998, but the court was closed that day due to Hurricane Georges. Since the District of Puerto Rico, by Amended Order of October 16, 1998, extended until October 30, 1998, the filing times for certain documents originally due to be filed between September 18, 1998, and October 2, 1998, and since, according to the plaintiffs' calculations, they had two days left on September 18th to file their amended complaint, they argue that two days should be added to the October 30th date. They say that gave them until November 3, 1998, to file the amended complaint and that they in fact did so. (It is not necessary to determine whether the amended complaint was "filed" on November 3rd, as the plaintiffs contend, or November 6th, as the plaintiffs' creative counting, the filing was due no later than October 30, 1998. Thus, the filing was not timely and the court was warranted in dismissing the complaint against Alves-Cruz.

As to the remaining defendants (Samuel Soe, Thomas Toe, and Victor Voe), the dismissal order notes that they were never identified or summoned, because order notes that they were never identified or summoned, because of the "plaintiffs' lethargic and careless manner of litigation" over more than a three-year period.

Plaintiffs rejoin that they are not responsible for the delay resulting from an earlier erroneous dismissal of this action on statute of limitations grounds, see Carreras-Rosa v. Alves-Cruz, 127 F3d 172, 175 (1st Cir. 1997), and they appear to be correct. As to the considerable period of remaining time in which there was inaction, they claim, without pointing to any support, that their efforts to obtain discovery were thwarted.

While both sides share some blame for the messy and frustrating course of this litigation, the plaintiffs have failed to demonstrate that the district court abused its discretion in dismissing the complaint against the unidentified defendants, particularly in light of plaintiffs' failure to comply with court orders as to Alves-Cruz, the main defendant.

Affirmed.

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civ. No. 95-1640 (PG)

LUIS CARRERAS-ROSA, ET AL.
Plaintiffs

v.

MELVIN ALVES CRUZ, ET
Defendants

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U.S. DISTRICT COURT
SAN JUAN, PR

OPINION & ORDER

Pending before this Court is defendant Melvin Alves Cruz's motion to dismiss (Dkt. #38). The Court note the following procedural history:

1. May 22, 1995: The complaint was filed. (Dkt. #1).
2. May 23, 1995: The summons directed at defendant Melvin Alves Cruz was issued.
3. November 8, 1995: Service of process was effected on defendant Melvin Alves Cruz in his

..... Appendix B

individual capacity. (Dkt. #38, Ex. I).

4. July 10, 1998: Plaintiffs filed a motion alleging that Melvin Alves Cruz was being sued not in his official capacity, but rather in his individual capacity. (Dkt. #28).

5. August 31, 1998: This Court granted plaintiff's counsel fifteen (15) days to amend the complaint to specify the capacity in which Melvin Alves Cruz was being sued. (Dkt. #30).

6. November 6, 1998: Plaintiff's counsel filed an amended complaint without forwarding a copy of it to defendant's counsel. (Dkt. #31).

7. January 28, 1999, plaintiff's counsel handed an amended complaint to defendant Melvin Alves Cruz's counsel during a status conference held in chambers.

Federal Rule of Civil Procedure 4(m) states in its pertinent part: "If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time..." The summons directed at defendant Melvin Alves Cruz was issued on May 23, 1995. However, service was not affected upon said defendant in his individual capacity until November 8, 1995. Therefore, 169 calendar days elapsed between the time that the summons was issued and the date it

was actually served. Plaintiffs, thus, have failed to comply with procedural rule 4(m).

On August 31, 1998, this Court ordered plaintiffs to specify with clarity within fifteen (15) days by means of an amended complaint in which capacity defendant Melvin Alves Cruz was being sued. Plaintiffs did amend their complaint and did specify that said defendant was being sued in his individual capacity, but did so on November 6, 1998, thus violating this Court's order to provide such matters within fifteen (15) days.

To this date, fictitious defendants Samuel Toe, Thomas Toe, and Victor Voe have neither been identified nor summoned. Because of plaintiff's lethargic and careless manner of litigation, this case has been stuck in this Court's docket for more than three year. It is the plaintiff's responsibility to develop and prosecute their own case. Moreover, this Court has the responsibility "to achieve the orderly and expeditious disposition of cases". Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962). "A district court has the unquestionable authority to dismiss a case with prejudice for want of prosecution in order to prevent undue delay in the disposition of pending cases, docket congestion and the possibility of harassment of defendant. "Jardines Ltd. Partnership v. Executive Homesearch Realty Serv. Inc., 178 F.R.D. 365 (D.P.R. 1998). See also Zavala-Santiago v. González-Rivera. 553 F. 2d 710 (1st Cir. 1977). The

Court finds plaintiff's delay is unwarrented. This Court's docket is congested enough and there in no place for plaintiffs who sit back and waste the Court's valuable time without making any effort to move their case along.

WHEREFORE, due to plaintiff's violation of Fed.R.Civ.P.4(m) and of this Court's August 31, 1998 order, defendant Melvin Alves Cruz's motion to dismiss is hereby **GRANTED**. Plaintiff's claims against defendants Samuel Toe, Thomas Toe, and Victor Toe are also hereby **DISMISSED** for lack of prosecution. Thus, it is hereby ordered that the case at bar be **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

San Juan, Puerto Rico, March 2, 1999

"s/ JUAN M. PEREZ-GIMENEZ"
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

Civ. No. 95-1640 (PG)

LUIS CARRERAS-ROSA, ET AL.
Plaintiffs

v.

MELVIN ALVES CRUZ, ET AL.
Defendants

ENTERED ON DOCKET
MAR 4, 1999 PURSUANT
TO FRCP RULES 58&79a
RECEIVED AND FILED
1999 MAR-3 PM 4:54
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PR

JUDGEMENT

The court having granted defendant Melvin Alves Cruz's motion to dismiss and having dismissed plaintiff's claims against defendants Samuel Toe, Thomas Toe, Victor Voe for lack of prosecution, it is hereby

Appendix C

ORDERED AND ADJUDGED that the case is **DISMISSED with prejudice.**

San Juan, Puerto Rico, March 2, 1999.

"s/ JUAN M. PEREZ-GIMENEZ"
U.S. District Judge

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 99-2370

LUIS CARRERAS-ROSA, FRANCISCO SOLER-ROSA
Plaintiffs, Appellants,
v.
MELVIN ALVES-CRUZ, ET AL.
Defendants, Apellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Juan M. Perez-Jimenez,
U.S. District Judge]

Before
Selya, Circuit Judge.
Campbell, Senior Circuit Judge.
and Lynch, Circuit Judge.

Antonio Bauza Torres on brief for appellants.
Carlos Lugo-Fiol, Solicitor General, Edda Serrano-Blasini, Deputy Solicitor General, and Eduardo Rodriguez-Quilichini, Assistant Solicitor General, Department of Justice, on brief for appellee Melvin Alves-Cruz.

..... Appendix D

October 9, 1997

Per Curiam. This appeal concerns the judgment dismissing a 42 U.S.C. 1983 complaint as untimely under the applicable Puerto Rico statute of limitations. We write to clarify that, applying Puerto Rico law, the day plaintiff's action accrued should not be counted as the first day of the limitations period and that the limitations period begins to run on the following day. The prior decisions of this court and the district court for Puerto Rico may have been somewhat inconsistent on that point. Therefore we take this opportunity to resolve any uncertainty.

I. Background

Plaintiff's brother was shot and killed by the defendants, policemen in Puerto Rico on May 19, 1994. Plaintiff's learned of the death on May 20, 1994. The filed their § 1983 complaint on May 22, 1995.

Defendants moved to dismiss based on the applicable one-year statute of limitations, Article 1868(2) of the Civil Code, P.R. Laws Ann. tit.31, § 5298(2). Plaintiffs responded that they did not know of their cause of action until they received an autopsy report in early May 1995. The district court rejected plaintiff's analysis and determined that the action accrued on May 20, 1994. The district court further

concluded that the complaint filed on May 22, 1995, was two days too late and so entered judgment dismissing the complaint.

Plaintiffs moved to vacate the judgment of dismissal, arguing that the day of accrual, May 20, 1994, should not be counted, so that the 365-day limitations period ran from May 21, 1994, until Saturday, May 20, 1995. They further argued that their complaint was timely filed on Monday, May 22, 1995, the next court day. The district court summarily denied that motion.

This appeal followed. The parties' briefs did not adequately address the question whether the day of accrual should be counted as the first day of the limitations period, and so supplemental briefs were ordered. Now that the issue has been fully briefed, and as the facts are fully laid out upon the record, we are prepared to decide the appeal without further argument. See 1st Cir. Loc. R. 34.1 (a)(2)(iii).

II. Discussion

The limitation period for filing this § 1983 claim is governed by the applicable state statute of limitations for personal injury actions. See Wilson v. Garcia, 471 U.S. 261,278-80 (1985). In Puerto Rico the applicable limitation period for tort actions in one year. Article 1868(2) of the Civil Code, P.R. Laws Ann. tit. 31, § 5298(2); Torres v. Superintendent of

Police, 893 F. 2nd 404, 406 (1st Cir. 1990). One year means 365 days, or 366 days in leap year. Olivo Ayala v. López Feliciano, 729 F. Supp. 9, 10 (D.P.R. 1990); Yeinsip v. Lufthansa German Airlines, 725 F. Supp. 113, 115 (D.P.R. 1989).

Although the limitations period is determined by state law, the date of accrual is a federal law question. The accrual period § 1983 action "ordinarily starts when the plaintiff knows, or has reason to know, of the injury on which the action is based." Rivera-Muriente v. Agosto-Alicea, 959 F. 2d 349, 353 (1st Cir. 1992). In this particular case, it is clear that the date of accrual is May 20, 1994, the date on which plaintiffs learned of their brother's death.

The question that concerns us here is whether the limitations period begins on the date of the accrual or the following day. In this § 1983 case brought in Puerto Rico, Puerto Rico law governs the limitations period, including the "closely related questions of ...application." See Wilson, 471 U.S. at 269. Thus, when the federal court borrows the state statute of limitations, so too the date on which the limitations period starts to run should be determined by the state law defining the "application" of the limitations period. Accordingly, we determine the question under Puerto Rico law.[1]

---

[1]To the extent that Puerto Rico law provides that the day that an action accrues is not counted as the first day of

Therefore, the result here would be the same whether federal law or Puerto Rico law were applied.

The prior opinions of the Puerto Rico district court and this court may have been somewhat inconsistent in determining the first day of the limitations period. The inconsistencies appear to stem from differing applications of two provisions of Puerto Rico law and a Puerto Rico court rule. Article 388 of the Political Code, P.R. Laws Ann. tit. 1, § 72, provides:

> The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Similarly, as relevant here, Rule 68.1 provides:

---

the limitations period, it is consistent with Fed. R. Civ. R. 6(a), which provides:

> In computing any period of time prescribed or allowed by . . . any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included..

> In computing any period of time prescribed or allowed by these rules, by order of the court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included..

In contrast, Article 1869 of the Civil Code, P.R. Laws Ann. tit. 31, § 5299, provides:

> The time for the prescription of all kinds of actions, when there is no special provition to the contrary, shall be counted from the day on which they could have been instituted.

In some federal cases, with which we not disagree, Article 1869 was thought to prevail, so that the limitations period was held to include the first day that the action could have been instituted. See Ramirez Morales v. Rosa Viera, 632 F. Supp. 491, 492 (D.P.R. 1986), aff'd, 815 F.2d 2, 4-5 (1st Cir. 1987); Olivo Ayala, 729 F.Supp. at 10; Dennis v. Figueroa, 642 F. Supp. 959, 961 (D.P.R. 1986); de la Cruz LaChapel v. Chevere Ortiz, 637 F.Supp. 43, 44 (D.P.R. 1986); see also Altair Corp. v. Pesquera de Busquets, 769 F. 2d 30, 33 (1st Cir. 1985). And in dicta this court has equated the date of accrual with the first day of the limitations period: "[The] date of accrual, i.e., the day on which the limitations clock begins to tick, is

determined by reference to federal law." Muniz-Cabrero v. Ruiz, 23 F. 3d 607, 610 (1st Cir. 1994) (precise dates were not dispositive in that case).

However, in other cases, with which we now agree, Article 388 prevailed, so that the limitations period began on the day following the date of accrual. See Salamanca v. American Airlines, Inc., 920 F. Supp. 24, (D.P.R. 1996); Conde v. Beltran Pena, 793 F. Supp. 33, 35-36 (D.P.R. 1992); Yeinsip, 725 F. Supp. at 115; see also Silva-Wiscovich v. Weber Dental Manufacturing Co., 835 F. 2d 409 (1st Cir. 1987).

We now conclude that the method of computing the limitations period followed in Salamanca, Conde, and Yeinsip applies in this § 1983 action filed in the district court for Puerto Rico:

> the day in which a tort cause of action arises counts in the sense that it provides the starting point for the computation of the prescriptive term; it is not, however, counted within that term

Salamanca, 920 F. Supp. at 26.

We reach this conclusion because, as the district court in Salamanca noted, the Puerto Rico Supreme Court has held that Article 388 (not counting the first day) applies to the statute of limitations for tort actions, which statute also prescribes this § 1983 action. E.g.,

Comunidad Agricola Bianchi v. Superior Court, 99 P.R. Dec. 366 (1970); Ortiz v. American Railroad Co., 62 P.R.Dec. 171, 176-77 (1943); Cintron v. Insular Industrial & Agricultural Exposition Ass'n, 58 P.R.Dec. 821, 828 (1941); see also Escalera v. Andino, 76 P.R.Dec. 251, 254 (1954). As the district court in Yeinsip explained, Article 1869 "is a suppletory [provision], to be applied only if no special law over the matter has been adopted," and Article 388 "is a specific statute which regulates the computation of legal periods of time," so that Article 388 controls. 725 F. Supp. at 115.

Here, applying the correct rule to compute the prescriptive period, plaintiff's action accrued on May 20, 1994, but the statute of limitations did not begin to run until the next day, May 21, 1994. The applicable 365-day period would have expired on Saturday, May 20, 1995, but, excluding the weekend days, the limitations period extended to the following Monday. It follows that plaintiff's complaint was timely filed on Monday, May 22, 1995.

Accordingly, we vacate the judgment of the district court dismissing the complaint and remand for further proceedings.

Proceedings include all events.
3:95 cv1640 Carreras-Rosa, et al v. Alves-Cruz, et al

FILE APPEAL CLOSED

FILE APPEAL CLOSED

U.S. District Court
Puerto Rico (San Juan)

CIVIL DOCKET FOR CASE #: 95-CV-1640

Carreras-Rosa, et al v. Alves-Cruz et al
Assigned to: Judge Juan M. Perez-Gimenez
Demand: $15,000.00
Lead Docket: None
Dkt# in other court: None
Filed: 05/22/95
Jury demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question
Cause: 28:1331 Fed. Question: Civil Rights Violation

5/22/95	1	COMPLAINT Filing Fee $ 120.00 Receipt # 76667 (su) [Entry date 05/25/95]
5/23/95	–	SUMMONS issued for Melvin

Docket as of April 21, 1999 1:05 pm

Appendix E

Proceedings include all events. FILE APPEAL
3:95 cv1640 Carreras-Rosa, CLOSED
et al v. Alves-Cruz, et al

		Alves-Cruz, PR Police Dept (su) [Entry date 05/25/95]
5/25/95	–	CASE sent to open file. (su)
10/12/95	2	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Extend Time until 11/10 to serve summons upon dft Alves Cruz, and to request order for dft Alves Cruz to assist to his office in order to be adequately served w/the summons and complaint (kd) [Entry date 10/13/95]
10/13/95	–	CASE REFERRED TO JUDGE. (kd)
10/18/95	–	ENDORSED ORDER granting [2-1] motion to Extend Time until 11/10 to serve summons order for dft Alves Cruz, denying [2-2] motion to request order for dft Alves Cruz to assist to his office in order to be adequately served w/the summons and

Proceedings include all events. FILE APPEAL
3:95 cv1640 Carreras-Rosa, CLOSED
et al v. Alves-Cruz, et al

		complaint (signed by Judge Juan M. Perez-Gimenez) (mr)
10/19/95	–	CASE sent to open file. (mr)
11/13/95	3	SUMMONS Returned Executed as to Melvin Alves-Cruz on Answer due on 12/4/95 for Melvin Alves-Cruz (mr) [Entry date 11/15/95]
12/12/95	4	MOTION by PR Police Dept. to Dismiss, with brief in support. Response due 12/26/95. (mr) [Entry date 12/13/95]
12/12/95	5	MOTION by Melvin Alves-Cruz to Extend Time for a period of 45 days to answer the complaint (mr) [Entry date 12/13/95]
12/14/95	–	ENDORSED ORDER granting [5-1] motion to Extend Time for a period of 45 days to answer the complaint, set Answer deadline to 1/25/96 for Melvin Alves-Cruz (Clerk) (mr)
1/4/96	6	MOTION by Luis Carreras-Rosa,

		Francisco Soler-Rosa to Strike [4-1] motion to Dismiss by PR Police Dept. (mr) [Entry date 01/05/96]
1/30/96	7	MOTION by Melvin Alves-Cruz for Joinder to PR Police Dept .'s motion to dismiss (mr) [Entry date 01/31/96]
2/20/96	–	ENDORSED ORDER denying [4-1] motion to Dismiss as PRPD is not deft. (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 02/22/96]
2/20/96	–	ENDORSED ORDER denying [6-1] motion to Strike [4-1] motion to Dismiss by PR Police Dept. (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 02/22/96]
2/20/96	–	ENDORSED ORDER granting [7-1] motion for Joinder to PR Police Dept .'s motion to dismiss. Pltfs are granted 20 days to show

		cause why this case should not be dismissed based on the status of limitations. Set Motion to Show Cause Filing deadline to 3/11/96 (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 02/22/96]
3/11/96	8	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Show Cause why case should not be dismissed (mr) [Entry date 03/12/96]
3/25/96	9	SUPPLEMENTAL MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Show Cause referring to: [8-1] motion to Show Cause why case should not be dismissed by Francisco Soler-Rosa, Luis Carreras-Rosa (mr) [Entry date 03/28/96]
5/30/96	10	MOTION by Melvin Alves-Cruz to request the Court to issue a

		judgment dismissing deft for pltfs' failure to comply with Court order (mr) [Entry date 06/03/96]
7/16/96	11	OPINION AND ORDER granting [4-1] motion by Judge Juan M. Perez-Gimenez) (mr) [Entry date 07/18/96]
7/16/96	12	JUDGMENT dismissing the instant action (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 07/18/96]
7/16/96	–	Case Closed (mr) [Entry date 07/18/96]
8/1/96	13	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Set Aside Judgment: [12-1] judgment order (mr) [Entry date 08/05/96]
8/9/96	–	ENDORSED ORDER denying [13-1] motion to Set Aside Judgment: [12-1] judgment order (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date

		08/12/96]
8/15/96	14	Informative Motion by Melvin Alves-Cruz re: pltf's motion to vacate judgment was not notified until receipt of this [Entry date 08/16/96]
9/12/96	15	NOTICE OF APPEAL by Luis Carreras-Rosa, Francisco Soler-Rosa from the Order of 8/12/96 denying mot to vacate jgmt. Transcript Order Form furnished to appellant. Appeal record due on 9/23/96 (ny) [Entry date 09/17/96] [Edit date 09/17/96]
9/27/96	–	Certified and transmitted Record on Appeal to U.S. Court of Appeals: [15-1] appeal by Francisco Soler-Rosa, Luis Carreras-Rosa (mr) [Entry date 10/01/96]
1/16/97	–	Appeal Filing Fee Paid; FILING FEE $105.00 RECEIPT # 84625 (mr) [Entry date 01/17/97]

Proceedings include all events. FILE APPEAL
3:95 cv1640 Carreras-Rosa, CLOSED
et al v. Alves-Cruz, et al

10/21/97	16	Printed OPINION from USCCA dated 10/9/97 re: [15-1] appeal by Francisco Soler-Rosa, Luis Carreras-Rosa, vacating the judgment of the DC and remanding for further proceedings. (mr) [Entry date 10/22/97]
11/20/97	17	JUDGMENT OF USCA (certified copy), issued as informal mandate, Re: [15-1] appeal by Francisco Soler-Rosa, Luis Carreras-Rosa remanding for further proceedings (mr) [Entry date 11/21/97]
11/20/97	–	Record on Appeal returned from U.S. Court of Appeals: [15-1] appeal (mr) [Entry date 11/21/97]
11/25/97	–	Case reopened (mr) [Entry date 11/21/97]
11/25/97	18	MOTION by Melvin Alves-Cruz, PR Police Dept. to request clarification as to the Opinion

		and Order issued on 7/15/96 (mr) [Entry date 11/26/97]
1/21/98	19	MOTION by Melvin Alves-Cruz for Marie Cortes to Withdraw as Attorney (mr) [Entry date 01/22/98]
3/31/98	20	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa for setting of a status conference (mr) [Entry date 04/01/98]
4/14/98	21	MINUTES of Setting: set Status Conference for 8:30 4/29/98 before Judge Juan M. Perez-Gimenez (Clerk) (mr) [Entry date 04/15/98]
4/28/98	22	NOTICE of Attorney Appearance for PR Police Dept. by Jose R. Cintron-Rodriguez (il) [Entry date 04/29/98]
4/29/98	–	Status Conference held before Judge Juan M. Perez-Gimenez (mr) [Entry date 05/01/98]
4/29/98	23	Minute entry: Status conference

Proceedings include all events. FILE APPEAL
3:95 cv1640 Carreras-Rosa, CLOSED
et al v. Alves-Cruz, et al

		held. Defts are granted 20 days to file a motion to dismiss (Judge Juan M. Perez-Gimenez) (mr) [Entry date 05/01/98]
5/1/98	24	MOTION by Melvin Alves-Cruz, Samuel Soe, Thomas Toe, Victor Voe to Dismiss. Response due 5/14/98 (mr) [Entry date 05/04/98]
6/1/98	25	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Extend Time to respond to mot to dismiss (il) [Entry dat4e 06/02/98]
6/4/98	–	ENDORSED ORDER granting [25-1] motion to Extend Time to respond to mot to dismiss, Response to Motion reset to 6/26/98 for [24-1] motion to Dismiss (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 06/08/98]
6/15/98	26	Informative Motion by Melvin

		Alves-Cruz re: deft's counsel had not been notified that pltf's motion for extension of time had been filed. (mr) [Entry date 06/16/98]
6/26/98	–	ENDORSED ORDER granting [19-1] motion for Marie Cortes to Withdraw as Attorney (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 06/29/98]
7/1/98	27	MOTION by Luis Carreras-Rosa, Francisco Soler-Rosa to Extend Time for a period of 5 working days to answer the motion to dismiss (mr) [Entry date 07/02/98]
7/10/98	28	RESPONSE by Luis Carreras-Rosa, Francisco Soler-Rosa in opposition to [24-1] motion to Dismiss by Victor Voe, Thomas Toe, Samuel Soe, Melvin Alves-Cruz (mr) [Entry date 07/13/98]
7/16/98	29	MOTION by Melvin Alves-Cruz

		for Leave to File reply to pltf's opposition to the motion to dismiss, to Extend Time for a period of 20 days to file the reply, and to request order requiring pltfs' counsel to comply with notice requirements (mr) [Entry date 07/17/98]
9/1/98	30	OPINION AND ORDER denying [24-1] motion to Dismiss, and pltfs are granted 15 days to amend the complaint to specify the capacity in which defts are being sued. set Amended Pleadings deadline to 9/17/98 (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 09/02/98]
10/30/98	–	ENDORSED ORDER, mooting [29-1] motion for Leave to File reply to pltfs' opposition to the motion to dismiss, mooting [29-2] motion to Extend Time for a

		period of 20 days to file the reply, mooting [29-3] motion to request order requiring pltfs' counsel to comply with notice requirements (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 11/02/98]
11/6/98	31	AMENDED COMPLAINT by Luis Carreras-Rosa, Francisco Soler-Rosa (Answer due 11/16/98 for PR Police Dept, for Victor Voe, for Thomas Toe, for Samuel Soe, for Melvin Alves-Cruz) ammending [1-1] complaint (mr) [Entry date 11/09/98]
12/7/98	32	MOTION by Melvin Alves-Cruz to Substitute Attorney Maria Judith Surillo for Elfrick Mendez Morales (mr) [Entry date 12/08/98]
12/7/98	33	MOTION by Melvin Alves-Cruz to Dismiss for non-compliance

		with Court Order. Response due 12/21/98. (mr) [Entry date 12/08/98]
12/11/98	34	MOTION by Melvin Alves-Cruz for Leave to File amended motion to w/draw and notice of appearance, nunc pro tunc as of 12/8/98 (with amended motion tendered) (mr) [Entry date 12/15/98]
1/15/99	–	ENDORSED ORDER denying [33-1] motion to Dismiss for non-compliance with Court Order (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 01/19/99]
1/15/99	35	MINUTES of Setting: set Status Conference for 8:30 1/28/99 before Judge Juan M. Perez-Gimenez (Clerk) (mr) [Entry date 01/19/99]
1/19/99	–	ENDORSED ORDER granting [34-1] motion for Leave to File

		amended motion to w/draw and notice of appearance, nunc pro tunc as of 12/8/98 (signed by Judge M. Perez-Gimenez) (mr) [Entry date 01/21/99]
1/25/99	36	MOTION by Melvin Alves-Cruz for Sanctions (mr) [Entry date 01/26/99]
1/29/99	–	Further Status Conference held before Judge Juan M. Perez-Gimenez (mr) [Entry date 02/08/99]
1/29/99	37	Minute entry: Further status conference held. Pltf provided discovery to counsel Surillo, who accepted the caveat that she represents deft Melvin Alves only in his official capacity. Discovery deadline is 2/26/99. set Jury Trial for 9:00 4/19/99 before (Judge Juan M. Perez-Gimenez) (mr) [Entry date 02/08/99]
1/29/99	38	MOTION by Melvin Alves-Cruz

		to Dismiss, and to Strike [31-1] amended complaint by Francisco Soler-Rosa, Luis Carreras-Rosa Response due 2/11/99. (mr) [Entry date 02/08/99]
2/10/99	–	ENDORSED ORDER Re: [36-1] motion for Sanctions. Counsel for pltfs shall notify deft's counsel of ALL motions filed or face sanctions personally (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 02/16/99]
3/3/99	39	OPINION AND ORDER granting [38-1] motion to Dismiss, dismissing pltfs' claims against deft Samuel Soe, Thomas Toe, and Victor Voe for lack of prosecution, and dismissing the case with prejudice (signed by Judge Juan M. Perez-Gimenez) (mr) [Entry date 03/04/99]
3/3/99	40	JUDGMENT dismissing the case

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 95-1640 (PG)

LUIS CARRERAS ROSA
FRANCISCO SOLER ROSA

PLAINTIFFS

MELVIN ALVES CRUZ (19481),
SAMUEL SOE, THOMAS TOE, AND
VICTOR VOE, all fictitious names
representing officials of the
PUERTO RICO POLICE DEPARTMENT

PLAINTIFFS DEMAND
TRIAL BY JURY
RECEIVED AND FILED
1995 OCT 12 PM 4:59
CLERK'S OFFICE
US DISTRICT COURT
SAN JUAN, P.R.

MOTION FOR EXTENSION OF TIME AND
REQUEST FOR ORDER

TO THE HONORABLE COURT:

COMES NOW the above captioned PLAINTIFFS, through Attorney ANTONIO-

BAUZA-TORRES and respectfully ALLEGE AND PRAY AS FOLLOWS:

The above captioned Plaintiffs, moves this Honorable Court for an order granting Plaintiffs:

a. An extension of time of 15 working days (up to and including November 10,1995) in order to serve defendant.

10/17/95
The extension of time is GRANTED.
The requested order is DENIED.
"s/ JUAN M. PEREZ-JIMENEZ"
U.S. District Judge

UNITED STATES DISTRICT COURT
For District of Puerto Rico

SUMMONS IN A CIVIL ACTION
CASE NUMBER: 95-1640 PG

LUIS CARRERAS ROSA
FRANCISCO SOLER ROSA

v.

MELVIN ALVES CRUZ (19481)
SAMUEL SOE, THOMAS TOE, AND
VICTOR VOE, all fictitious names
representing officials of the
PUERTO RICO POLICE DEPARTMENT

PLAINTIFF DEMAND
TRIAL BY JURY
RECIEVED AND FILED
1995 NOV 13 PM 4:02
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PR

To: (Name and Address of Defendant)
MELVIN ALVES CRUZ (19481)
GENERAL POLICE STATION
PUERTO NUEVO, PR

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and

serve upon PLAINTIFFS ATTORNEY (Name and Address)
ANTONIO BAUZA TORRES
32 CASCADA ST.
MUÑOZ RIVERA DEV.
GUAYNABO, PR 00969

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

FRANCES RIOS DE MORAN — MAY 23, 1995
CLERK — DATE

(Sgd) ANTHONY FIGUEROA
BY DEPUTY CLERK

AO 440 [REV 1/90] Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me.
Date November 8, 1995
NAME OF SERVER (PRINT) "s/Renaldo Vélez"
TITLE Marshal
Check one box below to indicate appropriate method of service:
x Served personally upon the defendant. Place where served: Marshall's Office, Mayaguez Court House. _ Left copies thereof at the defendant's dwelling house or usual place of above with a person of suitable age and discretion than residing therein. _ Returned unexecuted: _____ _____ _ Other (specify): _____ _____
STATEMENT OF SERVICE FEES
Travel
Services

Total

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on November 8/1995 "s/Renaldo Vélez"
Signature of Server
P.O. Box 1210
Mayaguez, P.R. 00681
Address of Serveer

NOTICE TO COUNSELAND TO THE PUBLIC

(98-34)

AMENDED ORDER

This court's September 28, 1998 order is hereby amended and revised to read as follows:

The term to file post-trial motions (except for those motions set forth in Fed. R. App. P. (a)(4) and except for those motions for which the rules explicity forbid any enlargements of time), reviews of U.S. Magistrate Judges' rulings and Reports and Recommendations, and Memoranda of Law scheduled to be filed from September 18, 1998 to October 2, 1998, both days inclusive, is hereby extended until October 30, 1998 at 5:00 p.m. The term to file any motions of the type listed in Fed. R. App.P, (a)(4) and the term to file any other motion for which the rules specifically forbid the extension of time are <u>not</u> extended. Any party wishing to extend the time for appeal must file a motion to extend within the time limits set forth in Fed. R. App. P. 4(a)(5) or Fed. R. App. P. 4(b).

For the purposes of the Speedy Trial Act considerations, 18 U.S.C. 3161 et seq., the period of September 18, 1998 to October 2, 1998, is hereby declared excludable, subject to further exclusions by the Court, as the circumstances of individual cases may warrant.

Appendix H

The Court is compelled to take these measures on account of the passage of the Hurricane Georges through Puerto Rico which requires complete shutdown of Court operations form September 21, 1998 through September 25, 1998.

By Order of the Court.

In San Juan, Puerto Rico, this 16th day of October, 1998.

"s/ FRANCES RIOS DE MORAN, ESQ."
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Civil No. 95-1640 (PG)

LUIS CARRERAS-ROSA
FRANCISCO SOLER-ROSA
members of the Sucession
Angel Luis Soler-Rosa
PLAINTIFFS

VS.

MELVIN ALVES-CRUZ (19481)
SAMUEL SOE, THOMAS TOE,
and VICTOR VOE,
all fictitious names representing
officials of the
PUERTO RICO POLICE DEPT.

PLAINTIFFS DEMAND
TRIAL BY JURY
SEAL OF THE UNITES STATES
DISTRICT COURT
DISTRICT OF PUERTO RICO
98-NOV-3 PM 1:49
RECEIVED AND FILED
(FILED DROP BOX)

AMENDED COMPLAINT

Appendix I

TO THE HONORABLE COURT:

COMES NOW the above captions **PLAINTIFFS**, through Attorney **ANTONIO-BAUZA-TORRES** and respectfully **ALLEGE AND PRAY AS FOLLOWS:**

I. INTRODUCTION

This is a civil action seeking damages against **DEFENDANTS** for:

a. Wrongful death, conspiring and committing acts under color of law which illegally deprived **PLAINTIFF'S DECEDENT** of rights secured under the **CONSTITUTION AND LAWS OF THE UNITED STATES AND THE**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 95-1640 (PG)

LUIS CARRERAS ROSA, et al.,
Plaintiffs,

v.

MELVIN ALVES CRUZ, et al.,
Defendants

RECEIVED & FILED
98 DEC-7 PM 3:26
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.
1/14/99
DENIED
See Amended Complaint
filed November 6, 1998.
"s/ JUAN M. PEREZ-JIMENEZ"
U.S. DISTRICT JUDGE

MOTION TO DISMISS FOR NON-COMPLIANCE OF COURT ORDER

TO THE HONORABLE COURT:

COMES NOW, codefendant Melvin Alves Cruz, in his official capacity, through the

undersigned attorney, and very respectfully avers and prays as follows:

1. On May 1, 1998, Defendant filed Motion to Dismiss Pursuant to Rule 12(b)(6) requesting dismissal of the case because the complaint was filed against defendant in his official capacity only and was protected by the Eleventh Amendment.
2. On July 10, 1998, plaintiffs filed Motion Opposition to Motion to Dismiss Pursuant to Rule 12(b)(6).
3. On August 31, 1998, this Honorable Court denied defendant's motion and granted plaintiffs, "...fifteen (15) days to amend the complaint to specify capacity in which defendants are being sued."
4. As of today, December 7, 1998, plaintiffs have not complied.